

Testimony by Alex Taubes, student, Yale Law School, in support of House Raised Bill No. 5126, AN ACT CONCERNING AN AGREEMENT AMONG THE STATES TO ELECT THE PRESIDENT OF THE UNITED STATES BY NATIONAL POPULAR VOTE.

Thank you for the opportunity to speak today in support of the National Popular Vote. My name is Alex Taubes. I grew up in Madison, Connecticut and am now a second-year law student at Yale Law School. I live in New Haven.

I cast my first presidential ballot by absentee from Boston University in 2008. I missed my second presidential election, because I decided at the last minute to be a poll observer in New Hampshire and didn't have time to vote by absentee. If it were up to me, I would rather be in Connecticut, canvassing my friends and neighbors. I was in New Hampshire—and not in Connecticut—because the winner-takes-all Electoral College makes “swing states” more important in presidential elections.

The best argument for the National Popular Vote is simple. The winner of an election should be the person with the most votes. That was the rule for every elected official here today; every mayor, governor, and member of Congress; and it should be the rule for our President. The last minority vote President was a Republican. But the next could be a Democrat. NPV is not a partisan issue.

Another good argument for the National Popular Vote is often overlooked. If there's a tie in the Electoral College or a three candidate race with no majority, the Electoral College fails to choose a President. Electoral College failure would cause a constitutional crisis and could throw our nation into chaos. The election of the President would go to the U.S. House of Representatives, but each state would get one vote.¹ States that have split house delegations may have no vote at all; and if no candidate had an absolute majority of the states, the nation could be at an impasse for days, weeks, or even months.²

The National Popular Vote system ensures a decisive outcome in the Electoral College—preventing such a crisis. Even if the national popular vote was an exact tie—which is extremely unlikely—the NPV Compact directs states in the compact to cast their votes under the winner-take-all rule.³

The NPV Compact will further Connecticut's interests. Mitt Romney and Barack Obama both ignored Connecticut after the 2012 party conventions. We didn't even get Paul

¹ U.S. CONST. amend. XII.

² See also Testimony of Jack H. Nagel, Professor of Political Science at the University of Pennsylvania, submitted to the General Assembly of Pennsylvania (October 18, 2007), *available at* <http://www.nationalpopularvote.com/resources/Nagel-Testimony-PENN-2007-10-18.pdf> (last accessed February 23, 2014).

³ H.B. 5126 (2014), Article III. (“In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official's own state.”).

Ryan or Joe Biden.⁴ Sure, both campaigns raised more than \$10,000,000 from Connecticut residents.⁵ But less than 1% of their advertising spending was spent in the state.⁶ Some argue that National Popular Vote would cause campaigns to focus on more densely populated areas. If true, Connecticut will benefit: we're the fourth densest state in the nation.⁷

The NPV Compact is constitutional. Article II, Section I of the Constitution gives this legislature the express power to direct its electors in the way it sees fit.⁸ For our nation's first eight presidential elections, Connecticut chose its electors without any popular vote at all.⁹ Today, Connecticut should choose its electors by joining a compact for a National Popular Vote. The Supreme Court has permitted states to enter into compacts without congressional consent in areas states control;¹⁰ and has said that state legislatures have complete power over the manner of choosing electors.¹¹

The NPV Compact will make election disputes less likely. As I mentioned earlier, it ensures a decisive result in the Electoral College. It would also make election recounts less likely. A recent study published by FairVote analyzed election results from 1980 to 2006, looking at the frequency of recounts, vote differences involved, recount outcomes, and the sizes of the relevant electorate. It found that the larger the number of votes cast in an election, the less the likelihood of a recount.¹²

⁴ *Presidential Tracker*, FAIRVOTE, <http://www.fairvote.org/presidential-tracker> (last accessed February 23, 2014).

⁵ *Presidential Campaign Contributions, by State*, L.A. TIMES, <http://www.graphics.latimes.com/usmap-presidential-candidate-contributions/> (last accessed February 23, 2014).

⁶ *Presidential Tracker*, FAIRVOTE.

⁷ *List of U.S. States by Population Density*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density (last accessed February 24, 2014).

⁸ U.S. CONST. art II, § 1 ("Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress . . .").

⁹ John L. Moore, ed., CONGRESSIONAL QUARTERLY'S GUIDE TO U.S. ELECTIONS 345-46 (3d ed. 1994). The testimony of my colleague Noah Lindell, submitted to this committee, details more of this interesting history.

¹⁰ See, e.g., *Northeast Bancorp v. Board of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175-176 (1985) ("The application of the Compact Clause is limited to agreements that are 'directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.'" (citations omitted) (internal quotation marks omitted)).

¹¹ *McPherson v. Blacker*, 146 U.S. 1, 35 (1892) ("[I]t is seen that from the formation of the government until now the practical construction of the clause has conceded plenary power to the state legislatures in the matter of the appointment of electors."); see also *Bush v. Gore*, 541 U.S. 98, 104 (2000).

¹² Monideepa Tulkdar & Rob Richie, *A Survey and Analysis of Statewide Election Recounts. 1980-2006*. (2007), available at <http://www.astrid-online.it/Elezioni-U/Studi--ric/FAIRVOTE-Report-ELECTION-RECOUNTS.pdf>

There are many good reasons to support the National Popular Vote Compact. Connecticut should join the Compact as soon as possible, and invite all other states to do the same.

